

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re

Application 10/052,865 filed 01/17/02 : Date 04/09/2004  
to inventor Henry O. Walcott : Art Unit 2858  
for IMPROVED RANGE RESISTORS FOR AC-DC TRANSFER MEASUREMENTS  
from provisional application 60/362,242, filed 01/17/2001.

PETITION FOR REVIVAL UNDER RULE 1.137(a)

RECEIVED

PETITIONS BRANCH  
MAIL STOP 313  
COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
Alexandria, VA 22313-1450

APR 12 2004

OFFICE OF PETITIONS

Sir,

Regarding the above-identified application, this petition is responsive to the NOTICE OF ABANDONMENT mailed 01/21/2004 (copy submitted herewith), and is accompanied by a preliminary amendment and a copy of the abstract, responsive to a NOTICE TO FILE CORRECTED APPLICATION PAPERS mailed 02/14/2002.

Petitioner, being the agent of record in the above identified application, hereby petitions for revival of subject application under 37 U.S.C. 1.137(a) on grounds that the delay leading to abandonment was unavoidable for the reasons explained in the accompanying ATTACHMENT 1.

Transmitted herewith please find

- (1) ATTACHMENT 1: Showing of cause of unavoidable delay.
- (2) Preliminary amendment responsive to NOTICE OF ABANDONMENT, including copies of NOTICES and missing Abstract.
- (3) required fee: check for \$55.00 37 C.F.R.

2004 RILEY 000000 4 00052855

23.09 02

DECLARATION BY PETITIONER

The petitioner, being the agent of record in the above identified patent application, hereby declares that abandonment of subject application was unavoidable as evidenced by the information set forth in the accompanying ATTACHMENT 1, showing that, as an independent sole patent practitioner whose patent business is in fact his most important business, the petitioner treated the patent application as a reasonable and prudent person would treat his most important business.

Applicant earnestly requests timely consideration and approval of the present petition; and, since subject application, as now amended, is believed to be in condition for examination and allowance, such action is earnestly requested.

Respectfully submitted,

  
by J. E. McTaggart

Agent for the applicant

Registration No. 29,754

1860 Eastman Avenue, Suite 105

Ventura, CA 93003

Tel. 805 339 0456

**ATTACHMENT 1:** Application 10/052,865 - Rule 1.137(a) petition.

**Showing of the cause of unavoidable delay.**

**Summary of events**

The NOTICE TO FILE CORRECTED APPLICATION PAPERS (copy enclosed herewith) for a missing abstract was timely received; however, contrary to agent's standard procedure, the notice became filed physically without the required entry in the computer docket data base. Consequently, since the case did not appear on the frequently-updated agenda printout lists generated from the docket data base, the notice thus became "lost" in the system and missed in the work agenda until revealed by the recent receipt of the NOTICE OF ABANDONMENT (copy enclosed).

**Agent's patent business**

Following 1980 PTO registration, agent's part time patent practice expanded to become his full time occupation in 1987. Subsequently, with no advertising or other form of promotional activity or expenditure, this business has experienced steady growth through earned merit, i.e. from personal referrals in an expanding network of satisfied clients. The great majority of these clients including the present inventor are small entity independent entrepreneurs (established and striving), whom the agent considers deserving of not only his own best efforts, but also of encouragement and of assistance to which they are entitled under the patent rules.

As a professional engineer, with over forty years of successful experience in electrical/electronic r&d design and management, the agent's value system stresses craftsmanship, quality of work product, ethics, responsibilities and obligations to his clients, with whom there is a great deal of mutual respect and trust. The agent takes pride in an excellent track record including over 115 patents now authored and successfully prosecuted in over 24 years of productive PTO transactions with no malpractice litigation, virtually no complaints, and a steady unsolicited flow of new patent business.

**Agent's office procedures**

Each case is initially assigned a Docket number, assigned a physical file folder and registered in a computer data base, which gets updated on an ongoing basis, assigning a due date, for each action item at the time it is transferred from an incoming holding basket to the physical file folder which includes eight full file drawers: approximately 500 file folders.

Frequently the updated data base is computer-sorted to provide an updated chronological agenda list from which work priorities are allocated.

There is a recognized risk of error/omission in entering data into the docket file folder. The safeguards against this are (1) frequent visual scanning of the data base by the agent for discrepancies with his own recollections and (2) as a further safety net, file-by-file reconciliation of the data base with each file folder in which the current status is indicated by the most recent transaction paper which is to be kept at the top of the stack of papers in each file.

Safeguard (1) is less time-consuming and is therefore done more frequently than the backup (2) which involves comparing each docketed line item in the database with the contents of the corresponding physical file and is so laborious and time consuming that it is normally reserved for relatively less stressful periods of low backlog unless there is reason to suspect that there are hidden errors and/or omissions

As an additional safety net that can catch errors and omissions that have escaped detection, closer ongoing contact with clients increases the likelihood that a client enquiry or other fortuitous event will prompt a review of the status of a case and lead to the discovery of a concealed error or omission.

#### Agent's work backlog

A key operating index of agent's patent business is an ongoing work backlog which is normally handled on a FIFO (first in first out) priority basis. The backlog, estimated in weeks or months of unfinished work based on current staff level, has tended to frequently reach levels of four or five months recent years.

Unlike work in the PTO where, for example, the waiting time for examination of new applications has no time constraint and can be allowed to increase indefinitely on a FIFO basis as required to accommodate the PTOs contemporary staffing and capabilities, the agents activities are practically all subject to short time constraints. Most new enquiries, searches, and applications are subject to whatever is left of the one year statutory limit. PTO maintenance fee deadlines are absolute, and considering the typical PTO action response period limits of 2-3 months, whenever the backlog reaches three or four months, scheduling the increasing work load to meet due dates and expiry dates becomes extremely critical, and FIFO must be abandoned for a priority juggling act condition which of necessity leaves insufficient time available for the diligence that would be

desired in lower priority activities such as auditing the database.

#### Agent's staffing situation

Currently, and throughout much of the history of the business, agent handles all aspects of the patent practice himself as greatly enabled by computer, CAD and word-processing capabilities, with occasional paralegal assistance as required in peak work backlog periods.

Agent has made several attempts to incorporate hired help, e.g. a full-time employee/trainee for over a one year period, an experienced registered patent agent, and an about-to-be registered candidate patent agent; however none of these worked out to be of overall benefit, due to the impact of training requirements, supervision demands, administration of payroll taxes and employee benefits, increased error-risk, etc. The present situation of a nearby on-call paralegal has proven to be the most satisfactory and error-resistant arrangement.

#### Circumstances leading to abandonment

Following 01/17/2002 filing of subject application, the NOTICE TO FILE CORRECTED APPLICATION PAPERS mailed 02/14/2002 (copy submitted herewith, citing a missing abstract) was received in the agent's office.

This NOTICE became removed from the dedicated incoming basket and placed into the physical docket file folder without the standard procedure entry into the computer data base which would have included the TWO MONTH due date and the action required, and would have appeared chronologically in the listing of action item and due dates in all subsequent printout current agenda listings, and would normally have been acted upon routinely by the simple timely submission to the PTO of the missing abstract.

Instead, not appearing in the data base or work agenda, the item became "lost" and "out of sight out of mind" until discovered by the recent receipt of the NOTICE OF ABANDONMENT mailed 01/21/2004 (copy submitted herewith).

At this time agent has found it impossible to determine whether the paper simply got filed accidentally, or whether it was filed intentionally in conjunction with an attempt to make the required computer data base entry that failed get properly registered and saved.

Furthermore, since the paralegal was assisting agent with the workload in that time frame and was allowed to perform data entry and filing in process of training, the agent, having

no recollection now of handling this item himself amongst hundreds of other matters but not ruling out that possibility, thus finds it impossible to determine whether the filing and/or possible failed entry was performed by the paralegal or by himself. Regardless of who did it, whether there was inattention or inadequacy of training involved, or even in the unlikely event that it was a computer failure, the agent accepts his ultimate responsibility for the occurrence and its remedy. Once the unrecorded filing occurred, the damage was done, and under the subsequent surrounding circumstances, abandonment became virtually unavoidable.

#### **Impact of PTO system failures and rule changes**

Adding substantially to the cumulative build-up of agents' work backlog are ongoing PTO and now still evolving rule changes regarding the form of amendments, requiring formal drawings on filing, form changes, etc. Furthermore, agent has experienced numerous incidents of excessively long delays and documents that have become mysteriously "lost" within the PTO system, requiring numerous time-consuming enquiries, typically complicated by unreasonable difficulties and delays in attempting to contact examiners and other PTO personnel.

These problems, which are no doubt considered in the PTO to be "unavoidable", by further burdening the agents' critical backlog and thus preventing more diligent and timely auditing of the data base, played a substantial role amongst the set of unusual circumstances that co-incidentally combined in this case to render the abandonment practically unavoidable.

#### **Client fell "out of the loop"**

As a further co-incidence in this case, when the agent finally contacted the client to notify him of the NOTICE OF ABANDONMENT, he learned that the client had become totally upset and distracted by the severity of some ongoing personal and business problems to the extent that the client had failed to follow up on the status of the patent application, consequently the agent had received no communication from the client during the entire time frame involved in this matter; whereas under normal conditions, the clients' normal diligence and enquiries could very well have revealed the omission in time to avoid the present abandonment.

That is not to say that the agent would tolerate a system that relied on anything as uncertain as client feedback to ensure timely responses to the PTO; to the contrary, agent has been and is now continuously striving to improve his system and further

discipline his own activities in order to handle PTO matters in the highly prudent and reliable manner that they deserve on behalf of the client, the PTO and in the agent's own heavily vested interests as in fact his most important business activity.

**Conclusion**

Agent considers this patent case and every patent case to be equally important, since as a self-employed sole patent practitioner his patent practice, as his primary source of earned income, is his most important business. In accordance with his normal code of ethics, the agent is absorbing the total cost and effort of the present appeal at no cost to the client.

Thus it is self-evident that there is overwhelming incentive acting on the agent to treat every patent case the same as a prudent and reasonable person would treat his or her own most important business.

Agent believes that the systems and safeguards in place are reasonable and prudent, probably better than average, and that the present abandonment was unavoidable due to a statistically unlikely combination of rare circumstances, in light of which agent pledges to strive to avoid further recurrence.

Agent hereby earnestly and sincerely requests a fair and reasonable application of the "golden rule".



J. E. McTaggart

Agent for the applicant

Registration No. 29,754

1860 Eastman Avenue, Suite 105

Ventura, CA 93003

Tel. 805 339 0456